

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

HARDING TOWNSHIP, NEW JERSEY,

Defendant.

CIVIL ACTION NO.

CONSENT DECREE

TABLE OF CONTENTS

I.	<u>BACKGROUND</u>	3
II.	<u>JURISDICTION</u>	4
III.	<u>PARTIES BOUND</u>	5
IV.	<u>DEFINITIONS</u>	5
V.	<u>SATISFACTION OF CLAIM FOR RESPONSE COSTS</u>	7
VI.	<u>FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE</u>	7
VII.	<u>COVENANT NOT TO SUE BY PLAINTIFF</u>	9
VIII.	<u>COVENANT NOT TO SUE BY SETTLING DEFENDANT</u>	11
IX.	<u>EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION</u>	13
X.	<u>RETENTION OF RECORDS</u>	14
XI.	<u>NOTICES AND SUBMISSIONS</u>	16
XII.	<u>RETENTION OF JURISDICTION</u>	17
XIII.	<u>INTEGRATION/APPENDICES</u>	17
XIV.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	18
XV.	<u>EFFECTIVE DATE</u>	18
XVI.	<u>SIGNATORIES/SERVICE</u>	18
XVII.	<u>FINAL JUDGMENT</u>	19

I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Secretary of the Interior, United States Department of the Interior (“DOI”), filed a complaint in this matter pursuant to Sections 107 and 113(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9607 and 9613(f), as amended (“CERCLA”), seeking reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Harding Landfill Site, located approximately 500 feet west of Long Hill Road and within the Great Swamp National Wildlife Refuge, in the Township of Harding, Morris County, New Jersey (the “Site”). The Site is depicted generally on a map attached hereto as Appendix A.

B. In September 2000, the U.S. Fish & Wildlife Service (“F&WS”), an agency within DOI, completed a removal action at the Site at a cost of approximately \$2,000,000, exclusive of Interest and the cost of operation and maintenance. The cost of the removal action was paid out of the Central Hazardous Materials Fund (“CHF”), an account within DOI used to conduct or finance response actions.

C. In December, 2002, the Township purchased a 65 acre parcel of land adjacent to the Great Swamp National Wildlife Refuge (the “Parcel”), by deed attached hereto as Appendix B, from Wildlife Preserves Inc., a private conservation group, for approximately \$1,750,000.

D. As part of the settlement embodied in this Consent Decree, the Parties agree that the Township will transfer title to and interest in the Parcel to the CHF. The Parcel will be managed by F&WS as part of the Great Swamp National Wildlife Refuge for the use by and enjoyment of the public.

E. The United States represents that, in accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), DOI notified the Federal natural resource trustee in September 2002 of negotiations with the defendant Township of Harding (“Township” or “Settling Defendant”) that has entered into this Consent Decree regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree. Natural resources located on the Site are managed by, held in trust by, or otherwise controlled by the F&WS.

F. The Township does not admit any fact, allegation or liability arising out of the transactions or occurrences alleged in the complaint.

G. The United States and Settling Defendant agree, and this Court **by** entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, consistent with the objectives of CERCLA, and in the public interest.

THEREFORE, with the consent **of** the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court **has** jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over the Settling Defendant. The Settling Defendant consents to and shall not challenge entry **of** this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon the Settling Defendant and its successors and assigns. *Any* change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of the Settling Defendant under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

“CHF” shall mean the DOI Central Hazardous Materials Fund.

“Consent Decree” shall mean this Consent Decree and all appendices attached hereto. **In** the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

“Day” shall mean a calendar day. **In** computing any period of time under this Consent Decree, **where** the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

“DOP” shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

Unless otherwise specified, “Interest” shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of Interest shall be the rate in effect at the time the Interest accrues. The rate of Interest is subject to change on October 1 of each year.

“Natural Resources” shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

“Operation and Maintenance Costs” shall mean past and future costs required to maintain the effectiveness of the removal action taken at the Site.

“Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States and the Settling Defendant.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that DOI or DOJ on behalf of DOI has paid at or in connection with the Site through the date of lodging of this Consent Decree, plus accrued Interest on all such costs through such date.

“Plaintiff” shall mean the United States.

“Section” shall mean a portion of this Consent Decree identified by a roman numeral.

“Settling Defendant” shall mean the Township of Harding, located in Moms County, New Jersey.

“Site” shall mean the former Harding Landfill, encompassing an approximately half acre landfill together with a surrounding area of approximately one and a half acres of vegetated lands adjacent to open marsh, located within the Great Swamp National Wildlife Refuge, Township of Harding, Moms County, New Jersey.

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

V. SATISFACTION OF CLAIM FOR PAST RESPONSE COSTS

4. Within 45 days of entry of this Consent Decree, the Settling Defendant shall transfer title to and interest in the Parcel, as depicted in Attachment A hereto, to the DOI Fund, in satisfaction of the United States’ claim for Past Response Costs and Operation and Maintenance Costs by execution of the deed in the form attached to this Consent Decree as Appendix C and delivery of that deed to the Moms County Clerk’s Office for recording. The Settling Defendant shall perform all activities and pay all recording fees and/or transfer or real estate taxes necessary to effectuate the transfer of the Parcel to the DOI Fund. Concurrently with the transfer, the Settling Defendant shall send notice to DOI and DOJ that the transfer of the Parcel has been made in accordance with Section XI (Notices and Submissions).

VI. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

5. In the event that the transfer of the Parcel as required by Section V (Satisfaction of Claim for Past Response Costs) is not completed within the time specified, or the Settling Defendant fails to comply with any other provision of this Consent Decree, the Settling

Defendant shall pay to DOI as a stipulated penalty the amount of \$1,500 per day that such transfer is not completed or failure to comply continues

6. a. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by DOI. All payments to DOI under this Paragraph shall be made by certified or cashier's check made payable to "DOI Central Hazardous Materials Fund" and shall be sent to:

Robert M. Wilson
Office of Environmental Policy and Compliance -
U.S. Department of the Interior
1849 C Street, N.W., Mail Stop 2340
Washington, D.C. 20240

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the Settling Defendant, and DOJ Case Number 90-1 1-3-07117. Copies of check[s] paid pursuant to this Paragraph, and any accompanying transmittal letter[s], shall be sent to DOI and DOJ as provided in Section XI (Notices and Submissions).

b. Penalties shall accrue as provided in this Paragraph regardless of whether DOI has notified the Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. Interest on stipulated penalties shall accrue from the date of demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

7. If the United States files with the Court a motion to enforce this Consent Decree, a complaint, or any other application for payment required under this Consent Decree and (1) the

United States thereafter receives a payment; or (2) an order ~~is~~ issued directing payment of any portion of the amount sought by the United States; or (3) the action is settled in a manner in which the United States receives any portion of the amount sought, Settling Defendant shall reimburse the United States for all costs arising from the preparation and filing of the motion, complaint or other application, including but not limited to, costs of attorney time.

8. Payments made under Paragraphs 5 through 7 shall be in addition to any other remedies or sanctions available to the Plaintiff by virtue of the ~~Settling~~ Defendant's failure to comply with the requirements of this Consent Decree.

9. Notwithstanding any other provision of this Section, the United States may, in ~~its~~ unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse the ~~Settling~~ Defendant from performance of any requirement of this Consent Decree.

VII. COVENANT NOT TO SUE BY PLAINTIFF

10. Covenant Not to Sue by United States. Except as specifically provided in ~~Paragraph~~ 11 (Reservation of Rights by United States), the United States covenants not to sue Settling Defendant pursuant to Section 107(a) of CERCLA relating to Past Response Costs and Operation and Maintenance Costs at the Site. Except as specifically provided in Paragraph 12, the United States ~~further~~ covenants not to sue Settling Defendant for recovery of damages, including costs of damage assessment, recoverable under Section 107 ~~of~~ CERCLA for injury to, destruction of, or ~~loss of~~ Natural Resources at the Site under the trusteeship of DOI. This ~~covenant~~ not to sue shall take effect upon the execution and delivery of the deed for transfer of the Parcel from Settling Defendant to the DOI Fund pursuant to Paragraph 4, and upon the

payment of all stipulated penalties due ~~and~~ owing, if any, pursuant to Paragraphs 5 and 6. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to the Settling Defendant and does not extend to any other person.

11. Reservation of Rights by United States. The covenant not to sue set forth in Paragraph 10 does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendant with respect to all other matters, including but not limited to:

- a. liability for failure of the Settling Defendant to meet a requirement of this Consent Decree;
- b. liability for damages for injury to, destruction of, or loss of natural resources under the trusteeship of any entity other than DOI, and for the costs of any natural resource damage assessments performed by or on behalf of any such entity;
- c. criminal liability;
- d. liability arising from the past, present, ~~or~~ future disposal, release, or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;
- e. liability for injunctive relief ~~or~~ administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 6906; and
- f. liability ~~for~~ costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs or Operation and Maintenance Costs.

12. Notwithstanding any other provision of this Consent Decree, the United States, ~~on~~ behalf of the Department of Interior, reserves the right to institute proceedings against Settling

Defendant in this action or in a new action seeking recovery of damages, including costs of damage assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of Natural Resources at the Site under the trusteeship of DOI, based on (1) conditions with respect to the Site, unknown to the United States as of the date the United States takes title to the Parcel, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources under the trusteeship of DOI, or (2) information received after the date the United States takes title to the Parcel which indicates ~~that~~ there is injury to, destruction of, or loss of Natural Resources under the trusteeship of DOI of a type that was unknown, or of a magnitude that was greater than was known, to the United States as of the date of lodging of the Decree.

VIII. COVENANT NOT TO SUE BY SETTLING DEFENDANT

13. Settling Defendant covenants not to sue and agrees not to assert any claims ~~or~~ causes of action against the United States, or its contractors or employees, with respect to Past Response Costs, Operation ~~and~~ Maintenance Costs, or this Consent Decree, including but not limited to:

a. **any** direct or indirect claim for reimbursement based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, **42** U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or **9613, or any** other provision ~~of~~ law;

b. **any** claims arising out of response activities at the Site, including claims based on DOI's selection of response actions, oversight ~~of~~ response activities or approval of plans ~~for~~ such activities; **and**

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response Costs and Operation and Maintenance Costs.

14. The foregoing Covenant Not To Sue by Settling Defendant, and the waivers of claims and causes of action in Paragraph 15 below, shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 11 and 12, but only to the extent that Settling Defendant's claims or causes of action arise from the same cause of action asserted, or order issued, by the United States pursuant to those Paragraphs. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

15. a. The Settling Defendant agrees not to assert any CERCLA claim or CERCLA cause of action that it may have for all matters relating to Past Response Costs and Operation and Maintenance Costs at the Site, including for contribution, against the United States or any other person, but, subject to Paragraphs 13 and 14 above, and Subparagraph b., below, may assert such claim or cause of action for matters not within the definition of Past Response Costs and Operation and Maintenance Costs.

b. The Settling Defendant further agrees not to assert any claims and to waive all claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendant with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or

treatment of hazardous substances at the Site, if all or ~~part~~ of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

IX. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

16. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights, defenses, claims, demands, and causes of action not otherwise proscribed by the terms of this Consent Decree which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

17. The Parties agree, and **by** entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, **42** U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are ~~Part~~ Response Costs **and** Operation and Maintenance Costs.

18. The Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it pursuant to this Consent Decree, it will notify DOI and DOJ in writing no later than **60 days** prior to the initiation **of** such suit or claim. The Settling Defendant also agrees that, ~~with~~ respect to any suit or claim for contribution brought against it for matters related to ~~this~~ Consent Decree, it will notify DOI and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, the Settling Defendant **shall** notify DOI **and** DOJ within

10 days of service or receipt of any Motion for **Summary** Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

19. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site. Settling Defendant shall not assert, and may not maintain, **any** defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII. In any subsequent judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, to which the Settling Defendant responds pursuant to Paragraph 14, above, the United States shall not assert, and may not maintain, any defense **or** claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Settling Defendant in the subsequent proceeding were **or** should have been brought in the instant case; provided, however, that nothing in this **Paragraph** affects the enforceability of the Covenant Not to Sue by Settling Defendant set forth in Section VIII.

X. RETENTION OF RECORDS

20. Until six years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records and documents now in its possession **or** control, or which come into its possession **or** control, that relate in **any** manner to response actions taken at the **Site or** the liability of any person **for** response actions conducted **and** to be conducted at the Site, regardless

of any retention policy to the contrary.

21. After the conclusion of the document retention period in the preceding paragraph, Settling Defendant shall notify DOI and DOJ at least 90 days prior to the destruction of any such records or documents, and, upon request by DOI or DOJ, Settling Defendant shall deliver any such records or documents to DOI. Settling Defendant may assert that certain documents, records, or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted. However, no documents, reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendant shall retain all records and documents that it claims to be privileged until the United States has had a reasonable opportunity, not to exceed one year following DOI or DOJ's initial request, to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

22. By signing this Consent Decree, Settling Defendant certifies individually that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents. and has fully and accurately disclosed to DOI, all information currently in its possession, or in the possession **of** its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal **of** a hazardous substance, pollutant or contaminant at **or** in connection with the Site; and

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site, after notification of potential liability or the filing of **a** suit against the Settling Defendant regarding the Site.

XI. NOTICES AND SUBMISSIONS

23. Whenever, under the terms of this Consent Decree, notice is required **to** be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a ~~change~~ to the other Parties in writing. Written notice **as** specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect **to**, DOT, DOJ, and Settling Defendant, respectively.

As to DOI:

John F. Seymour
Attorney Advisor
Office of the Solicitor
U.S. Department **of** the Interior
1849 C Street, N.W.
Washington, D.C. 20240

As to DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
DJ No. 90-11-3-07117
P.O. Box 7611
Washington, D.C. 20044-7611

As to Settling Defendant:

Richard J. Conway, Jr., **Esq.**
Schenck, Price, Smith & King, LLP
10 Washington Street
P.O. Box 905
Morristown, New Jersey 07963-0905

Harding Township Administrator
Harding Township
Blue Mill Road
P.O. Box 666
New Vernon, New Jersey 07976

XII. RETENTION OF JURISDICTION

24. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIII. INTEGRATION/APPENDICES

25. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is a map of the Site; "Appendix B" is the deed of conveyance of

the Parcel from Wildlife Preserves, Inc. to the Settling Defendant; and “Appendix C” is the deed of conveyance of the Parcel from Settling Defendant to the DOI Fund.

XIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

26. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

27. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of either Party **and** the terms of the agreement may not be used as evidence in any litigation between the Parties.

XV. EFFECTIVE DATE

28. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XVI. SIGNATORIES/SERVICE

29. The undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division **of** the United States Department **of** Justice certifies that **he** or she is authorized to enter into the terms and conditions **of this** Consent Decree and to execute and bind legally such Party to this document.

~~30.~~ Settling Defendant hereby agrees not **to** oppose entry of this Consent Decree **by** this **Court** or to challenge any provision of **this** Consent Decree, unless the United States has

notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

31. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XVII. FINAL JUDGMENT

32. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and the Settling Defendant. The Court finds that **there** is no just reason for delay and therefore enters this judgment **as a** final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED this ____ day of _____, 2003.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Harding Township*, C.A. No. (D.N.J.), relating to the Harding Township Landfill Site.

FOR THE UNITED STATES OF AMERICA

Date: 9/2/03

~~THOMAS L. SANSONETTI~~
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 8/25/03

JONATHAN A. MARKS
Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611
(202) 514-4454

CHRISTOPHER J. CHRISTIE
United States Attorney for the
District of New Jersey

MICHAEL A. CHAGARES
Assistant United States Attorney
Chief, Civil Division
U.S. Attorney's Office for the
District of New Jersey
970 Broad Street, Room 400
Newark, New Jersey 07102
(973) 645-2700

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Harding Township*, C.A. No. (D.N.J.), relating to the Harding Township Landfill Site.

FOR THE UNITED STATES DEPARTMENT
OF THE INTERIOR

JOHN F. SEYMOUR
Attorney Advisor
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

THE UNDERSIGNED PARTIES enter into #is Consent Decree in the matter of *United States v. Harding Township*, C.A. No. (D.N.J.), relating to the Harding Township Landfill Site.

FOR DEFENDANT ~~HARDING~~ TOWNSHIP

Date:

7/25/2004
2003 JRM

Agent Authorized to 'Accept Service on Behalf of Above-Signed Party:

Name:

John R. Murray

Title:

Chair, Township Committee

Address:

PO Box 666

Blue Mill Road

New Vernon, NJ 07976

Appendix A



Appendix B



2003-004512

DEED

Prepared by: (print signer's name)

below signature

William J. Fiore, Esq.

Block 51
Lot 34

This Deed is made on December 19, 2002,

BETWEEN WILDLIFE PRESERVES, INC., a not-for-profit corporation of the State of New Jersey, having its office at One Gateway Center, Suite, 2500, Newark, New Jersey 07102, referred to as the Grantor.

AND TOWNSHIP OF HARDING, IN THE COUNTY OF MORRIS, a municipal corporation of the State of New Jersey, whose post office address is in Blue Mill and Sand Spring Roads, New Vernon, New Jersey 07976, referred to as the Grantee.

Transfer of Ownership. The Grantor grants, conveys and transfers ownership of the property described below to the Grantee. This transfer is made for the sum of **ONE MILLION SEVEN HUNDRED FIFTY THOUSAND DOLLARS AND 00/100 (\$1,750,000.00)**. The Grantor acknowledges receipt of this money.

Tax Map Reference. (N.J.S.A. 46:15-1.1) Township of Harding, Block NO. 51, Lot NO. 34.

Property. The property consists of the land in the Township of Harding, County of Morris and State of New Jersey. The legal description is: See attached Schedule A.

Being known as Lot 34, Block 51 as set forth on the Official Tax Map of the Township of Harding.

Being the same property conveyed to Grantor herein by Deed from Howard Bayne and Louise Van Beuren Bayne, his wife,, dated December 27, 1957 and recorded in the Morris County Clerk's Office in Book 272, page 57 excluding any lands included in the Declaration of Taking by the United States of America recorded in Morris County Deed Book 2169, page 386.

Promises by Grantor. The Grantor promises that Grantor has done no act to encumber the property. This promise is called a "covenant as to grantor's acts" (M.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

Restrictions. The property is conveyed with the conditions and limitations, running with the land, that the entire lot shall, in the interest of the public and wildlife, be administered for the Conservation, management and protection of the fish, wildlife and plant resources and their habitats, and in addition, no fishing, trapping, hunting or driving for the purpose of hunting shall be permitted. During any hunting season established on the lands of the Refuge adjacent to the lot, the property shall be closed to hunters and open to the owner and its representatives and persons (other than hunters) authorized by the owner, or government personnel in the exercise of their law enforcement and safety duties.

Notwithstanding the above restrictions, Grantee, its successors and assigns shall be allowed to subdivide up to no more than four (4) lots on a total of not more than twenty (20) contiguous acres. Each such lot shall be restricted to one (1) single family house at a minimum of five thousand (5,000) square feet of interior size. NO more than forty thousand (40,000) square

0805767P155

feet per each lot shall be disturbed or cleared. The foregoing limits do not apply to access roads and utility services, which shall be located and constructed to service those lots so as to have minimal size and impacts. Special efforts shall be used in any development to minimize damage to wildlife and its environment.

These restrictions shall be restrictions which run with the land and shall be binding on Grantee and all successors and assigns.

Signatures. This Deed is signed by the Grantor's proper corporate officer as of the date at the top of this page.

WILDLIFE PRESERVES, INC.

By: Robert Perkins, Jr.
Robert Perkins, Jr., President

STATE OF NEW JERSEY
COUNTY OF ESSEX

SS.:

I CERTIFY that on December 19, 2002 Robert Perkins, Jr. personally came before me and acknowledged under oath, to my satisfaction, that:

(a) this deed was signed by Robert Perkins, Jr., who is President of Wildlife Preserves, the entity named in this deed and he was fully authorized to and did execute this deed on its behalf;

(b) this deed was made for \$1,750,000.00 as the full and actual consideration paid or to be paid for the transfer of title. (Such consideration is defined in N.J.S.A. 46:15-5)

William J. Fiore, Esq.
Attorney At Law
State of New Jersey

D E E D		Dated: December 19, 2002
WILDLIFE PRESERVES, INC.		Record and Return to:
Grantor,	Roger Clapp, Esq.	
	Cooper, Rose & English LLP	
	480 Morris Avenue	
	Summit, NJ 07901	
TO		
TOWNSHIP OF HARDING		
Grantee.		

RECEIVED

2003 JAN -8 P 5:51

JOAN BRAMHALL
MORRIS CO. CLERK

COUNTY OF MORRIS	
Consideration	1,750,000.00
Base Tax	
Additional Tax	
REALTY TRANSFER FEE	tax exempt
Date	1/8/03
RECORDING FEE	45.00 by Cooper R

0805767P157

SCHEDULE A

ALL that certain tract, lot and parcel of land lying and being in the Township of Harding, County of Morris and State of New Jersey, and being more particularly described as follows:

ALL AS SET FORTH IN DEED BOOK Q72 PAGE 57. 'EXCEPTING THEREOUT AM, THEREFROM THAT PART OF SAME INCLUDED IN TRACT NO. 2196 IN DECLARATION OF TAKING IN DEED BOOK. 2169 PAGE 386, AT PAGES 411 TO 416.

FOR INFORMATION: Being known and designated as Lot No. 34, Block No. 51 on the tax maps of the Township of Harding.

Appendix C

DEED

THE TOWNSHIP OF HARDING, IN THE COUNTY OF MORRIS, a municipal corporation of the State of New Jersey, having a mailing address of P.O. Box 666, New Vernon, New Jersey 07976, referred to as the Grantor, for consideration paid, in the amount of One (\$1.00) Dollar, the receipt and sufficiency of which is hereby acknowledged, does hereby grant and convey to **THE UNITED STATES OF AMERICA**, having a mailing address for the purpose of this conveyance of 1849 C Street, N.W., Washington, DC 20240, referred to as the Grantee, with covenants as to Grantor's acts (N.J.S.A 46:4-6), all that certain tract, lot and parcel of land lying and being in the Township of Harding, County of Morris and being more particularly described as follows:

All as set forth in Deed Book Q72, Page 57. Excepting thereout and therefrom that part of the same included in tract no. 219d in the Declaration of Taking recorded in Deed Book 2169, Page 386, & Pages 411 to 416.

Including all right, title and interest of the Grantor in and to any alleys, streets, ways, strips, or gores abutting or adjoining the property.

Being the same property conveyed to The Township of Harding by deed from Wildlife Preserves, Inc. dated December 19, 2002, and recorded on January 8, 2003, in Deed Book 05767, Page 155.

Tax Map Reference (N.J.S.A. 46:15-2.1) Lot 34 in Block 51 on the current Tax Maps of the Township of Harding.

Subject to the following restrictions:

The property is conveyed with the conditions and limitations, running with the land, that the entire lot shall, in the interest of the public and wildlife, be administered for the conservation, management and protection of the fish, wildlife and plant resources and their habitats, and, in addition, no fishing, trapping, hunting, or driving for the purpose of hunting shall be permitted. During any hunting season established on the lands of the Refuge adjacent to the lot, the lot shall be closed to hunters and open to the Grantee and its representatives and persons (other than hunters) authorized by the Grantee, or government personnel in the exercise of their law enforcement and safety duties.

Notwithstanding the above restrictions, Grantee, its successors and assigns shall be allowed to subdivide up to no more than four (4) lots on a total of not more than twenty (20) contiguous acres. Each such lot shall be restricted to one (1) single family house at a minimum of five thousand (5,000) square feet of interior size. No more than forty thousand (40,000) square feet per each lot shall be disturbed or cleared. The foregoing limits do not apply to access roads and utility services, which instead shall be located and constructed to service those lots so as to have

minimal size and impacts. Special efforts shall be used in any development to minimize damage to wildlife and its environment.

To have and to hold the above granted, bargained, and described premises with the appurtenances and every part thereof unto the said Grantee and its assigns forever.

And the said Grantor, does covenant with the said Grantee and its assigns, that at the time of the sealing and delivery of these presents it is lawfully seized in its own right of good, absolute, and indefeasible estate in fee simple of the above granted, bargained and described premises, and has good right, full power and lawful authority to grant, bargain, sell and convey the same in the manner and form aforesaid. And that the said premises are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of whatever nature and kind whatsoever, except as aforesaid and except for:

1. **Easements to Algonquin Gas Transmission Company in Deed Book L-51, page 23; Deed Book O-51, page 407; Deed Book O-51, page 409 and Deed Book B-70, page 103.**
2. **Utility easements in Deed Book G-51, page 375 and Deed Book A-37, page 260.**
3. **Rights of the public in and to Long Hill Road.**

The acquiring federal agency is the United States Department of the Interior.

In Witness Whereof, the Grantor has hereunto caused this deed to be executed and attested to by its duly authorized representatives, this day of , 2003

ATTEST:

**THE TOWNSHIP OF HARDING
IN THE COUNTY OF MORRIS**

Richard C. Wiedmann, Township Clerk

By: John R Murray, Mayor

STATE OF NEW JERSEY :
COUNTY OF MORRIS :
SS:

Then personally appeared before me, the subscriber, a notary public of the State of New Jersey, Richard C. Wiedmann, who, being by me duly sworn, on his oath deposes and makes proof to

my satisfaction, that he is the Township Clerk of the Township of Harding, the municipal corporation named in the within Deed; that John R. Murray is the Chairman of the Township Committee of such corporation; that the execution, as well as the making of this Deed, has been duly authorized by an ordinance of the Township Committee of the Township of Harding, duly adopted by the said Township Committee; and that the seal affixed to said Deed signed and delivered by said Chairman as Mayor of the Township of Harding, as and for the voluntary act and deed of said Township, in the presence of said deponent, who thereupon subscribed his name thereto as attesting witness.

Sworn and subscribed
before me this day
of , 2003.

Richard C. Wiedmann
Township Clerk